IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10124 of 2002

with

SPECIAL CIVIL APPLICATION No 12282 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAJAPATI HARJIVAN PUNJIRAM

Versus

COMPETENT AUTHORITY OF GAS AUTHORITY OF INDIA

Appearance:

MR KIRIT I PATEL for Petitioner No. 1

MR VD GAJJAR for Respondent No. 1

MR RAJESHWAR J DAVE for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 28/07/2003

COMMON ORAL JUDGEMENT

Rule. Mr. Rajendra Dave appears for the respondents and waives service of rule for the respondents. By consent of the parties, the matters are taken up for final hearing today.

2. Since the facts, more or less, are common and the issue involved is also common, both these petitions are being disposed of by this common judgment.

3. The only point involved in these petitions is that whether the learned District Judge was justified in rejecting the applications for deciding compensation on the ground that evidence was not lead qua valuation of the land or market value of the land.

4. Short facts of the case are that the respondent No.2 is the authority constituted under the Petroleum and Minerals Pipelines (Acquisition of Right of User in land) Act, 1962 [hereinafter referred to as the Act] and it has power to lay down pipeline for gas and petroleum products. A pipeline was laid by the respondent No.2 through the agricultural lands of both the petitioners. As per the requirement of law, initially compensation was decided by the competent authority and the said compensation was accordingly paid to both the petitioners. The petitioners were not satisfied with the said compensation, and, therefore, they moved applications before the learned District Judge under section 10 (2) of the Act for additional compensation or for enhancement of the compensation. The case of the petitioners is that there were lemon trees, whose life would be approximately 40 years after full growth over a period of 10 years; and that there were also neem trees and other trees etc. which are damaged. The petitioners, therefore, prayed for additional amount of compensation.

4.1. The petitioners did not press for enhancement of compensation for hedge and pala, but have pressed for compensation for lemon trees and other trees before the learned District Judge. Evidence was also led for such purpose. Learned District Judge dismissed the applications on the ground that the petitioners have not led any evidence for showing the market value of the lands. Under these circumstances, the present petitions.

5. I have heard Mr. Patel for the petitioners and Mr. Dave for the respondent authorities.

6. The perusal of the reasonings and the order

passed by the learned District Judge shows that the learned District Judge has erroneously concentrated the whole issue on the basis that he has power only to decide the additional compensation qua the value of the land only and he has not to consider the other damages caused to the owner on account of laying down of the pipeline, keeping in view the other aspects of crops, trees, immovable property etc.

7. The scheme of the Act, more particularly, section 10 of the Act, interalia provides for compensation which reads as under:-

10. Compensation

(1). Where in the exercise of the powers conferred by section 4, section 7 or section 8 by any person, any damage, loss or injury is sustained by any person interested in the land under which the pipeline is proposed to be, or is being, or has been laid, the Central Government, the State Government or the corporation, as the case may be, shall be liable to pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the competent authority in the first instance.

(2). If the amount of compensation determined by the competent authority under sub-section (1) is not acceptable to either of the parties, the amount of compensation shall, on application by either of the parties to the District Judge within the limits of whose jurisdiction the land or any part thereof is situated, be determined by that District Judge.

(3). The competent authority or the District Judge while determining the compensation under sub section (1) or sub-section (2), as the case may be, shall have due regard to the damage or loss sustained by any person interested in the land by reason of-

(i). the removal of trees or standing crops, if any, on the land while exercising the powers under section 4, section 7, or section 8.

(ii). the temporary severance of the land under which the pipeline has been laid down from other lands belonging to, or in the occupation of, such person; or,

(iii). any injury to any other property, whether movable or immovable, or the earnings of such persons caused in any other manner.

Provided that in determining the compensation no account shall be taken of any structure or other improvement made in the land after the date of the notification under sub-section (1) of section 3.

(4). Where the right of user of any land has vested in the Central Government, the State Government or the corporation, the Central Government, the State Government or the corporation, as the case may be, shall, in addition to the compensation, if any, payable under sub-section (1), be liable to pay to the owner and to any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such vesting, compensation calculated at ten per cent, of the market value of that land on the date of the notification under sub-section (1) of section 3.

(5). The market value of the land on the said date shall be determined by the competent authority and if the value so determined by that authority is not acceptable to either of the parties, it shall, on application by either of the parties to the District Judge referred to in sub-section (2), be determined by that District Judge.

(6). The decision of the District Judge under sub-section (2) or sub-section (5) shall be final.

8. Sub-section (1) of section 10 of the Act provides for liability to pay compensation to such person for such damage, loss or injury at the first instance. Sub-section (2) of section 10 provides that if the amount of compensation determined by the competent authority under sub-section (1) is not acceptable to either of the parties, application may be made by either of the parties to the District Judge within the limits of whose jurisdiction the land or any part thereof is situated, and such application shall be determined by the learned District Judge. Sub-clause (i) of sub-section (3)

provides that while determining the compensation under sub section (1) or sub-section (2), as the case may be, due regard shall be given to the damage or loss sustained by any person interested in the land by reason of the removal of trees or standing crops, if any, on the land while exercising the powers under section 4, section 7, or section 8 of the Act. Sub clause (ii) of sub-section (3) provides for payment of compensation for temporary severance of the land under which the pipeline has been laid down. Sub-clause (iii) of sub-section (3) provides for compensation for damages for any injury to any other property, whether movable or immovable, or the earnings of such persons caused in any other manner. Proviso to this sub-clause provides that in determining the compensation no account shall be taken of any structure or other improvement made in the land after the date of the notification under sub-section (1) of section 3. Sub-section (4) of section 10 of the Act provides for calculating the compensation for right of user over the land, at the rate of 10% of the market value of the land on date of notification under sub-section (1) of section 3 of the Act. Sub-section (5) of the section 10 of the Act provides for the determination of the market value of the land, and as per sub-section 6 of section 10 of the Act, the decision of the learned District Judge is to be treated as final.

9. The aforesaid scheme of section 10 interalia provides for damages to the owner for deprivation of right or enjoyment over the land, and it also provides for other damages or loss suffered by any person having interest in the land, may be by way of removal of trees or standing crops or any other properties -movable or immovable, or earning of such person. In the present case, the learned District Judge has considered the whole case as if he is only required to decide the claim for enhancement of the compensation keeping in view of the provisions of section 10 (4) of the Act, and he has taken a view that since there is no evidence for showing the market value of the land, the question cannot be examined further. However, the learned District Judge has lost sight of an important and crucial aspect of the case that the application of the petitioners are essentially not for enhancement of compensation or damages under section 10 (4) but was under section 10 (3) of the Act. Even it is on record that the evidence was led by the petitioners to show the life of lemon trees and other trees, the loss of income for damage of the lemon trees and other aspects. However, the learned District Judge has not at all considered the same, and has misdirected himself to the issue which was not as such the subject matter of the

applications. Therefore, it can be said that the learned District Judge has committed an error on the face of the record and the petitioners have made out a case for interference in exercise of powers by this Court under Article 227 of the Constitution of India. As such, the learned District Judge ought to have considered the applications keeping in view the provisions of section 10(3) of the Act and ought to have decided the applications on the basis of evidence available before him which were led by the petitioners in respect of lemon trees and other trees for which the compensation is claimed as inadequate by the petitioners, after hearing the respondent authorities. Since the said aspect is not accordingly considered, the matters deserves to be remanded to the learned District Judge for re-consideration, and in any case, the present judgment and order passed by the learned District Judge cannot be sustained in the eyes of law.

10. In view of the aforesaid discussion, the judgment and order dated 28th February 2001 passed by 2nd Joint District Judge, Mahesana in Civil Misc. Applications No. 93/96 and 94/96 is quashed and set aside, and the matter is remanded to the learned District Judge to re-hear the parties on the basis of evidence already available on the record, and to decide the compensation by appreciating evidence on record, keeping in view the observations made by this Court in the earlier paragraphs of this judgment. The learned District Judge shall decide the applications as early as possible preferably within a period of four months from the date of receipt of the writ of this Court.

11. Both the petitions are allowed accordingly to the aforesaid extent. There shall be no order as to costs.

[JAYANT PATEL, J.]
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